

# EXECUTIVE SUMMARY

## POST GOVERNMENT EMPLOYMENT

### I. Employment Restrictions after Leaving DOD

#### Personal Lifetime Ban

Rule. After you leave NAVAIR, you may not represent someone else to the government regarding particular matters that you worked on while in government service.

- Matter must have involved a "specific party" for ban to apply.
- "Personal and substantial participation" is required for ban to apply.
- This ban remains for the lifetime of the "particular matter."
- This prohibition does not apply to "behind-the-scenes" assistance in connection with the representation of another person, i.e. "in-house" counseling is allowable.

Example #1. An officer is regularly involved in the formulation of policy, procedures and regulations governing departmental procurement and acquisition functions. Participation in such activities does not restrict the officer after leaving the government as to particular cases involving the application of such policies, procedures, or regulations. [But 1 year waiting period required by Procurement Integrity Act may apply if you took action concerning contractor. See discussion below.]

Example #2. An officer personally approves the departmental budget, but does not participate substantially in the approval of all items contained in the budget. Participation is substantial only in those cases where a budget item is actually put into issue. Even then, the retired officer is not disqualified with respect to an item if it is a general program rather than a particular matter involving a specific party. However, see the "Official Responsibility 2 Year Ban."

#### Official Responsibility 2 Year Ban

Rule. For 2 Years after leaving NAVAIR, you may not represent someone else to the government regarding particular matters that you did not work on yourself, but were pending under your responsibility during your last year of government service.

- Matter must have involved a "specific party" for ban to apply.

- This prohibition does not apply to "behind-the-scenes" assistance in connection with the representation of another person, i.e. "in-house" counseling is allowable.

Example. During tenure as NAVAIR, an officer's subordinates undertook major changes in the agency enforcement standards involving safety. Eighteen months after retiring, the officer is asked to represent Z Company that believes it is being unfairly treated under the enforcement program. The Z Company matter first arose on a complaint filed after the officer terminated employment. The officer may represent Z Company because the matter pending under the officer's official responsibility was not one involving a specific party. [Plus the "Agency Cooling Off 1 Year Ban" discussed below has elapsed.]

### Agency Cooling Off 1 Year Ban

[FLAG OFFICER ONLY]

Rule. For 1 year after leaving a senior position, you may not represent someone else, with the intent to influence, before your former agency regarding any official action.

- Prior involvement or responsibility not required for this ban to apply.
- This ban aims at the possible use of personal influence based upon past governmental affiliations to facilitate the transaction of business.
- "Specific party" not required for this ban to apply.
- This prohibition does not apply to "behind-the-scenes" assistance in connection with the representation of another person, i.e. "in-house" counseling is allowable.
- Element of controversy or influence is required for this ban to apply.
- Agency includes all DOD except DISA, DIA, DLA, NIMA, and NSA, and for you, the Navy. In other words your cooling off period will prohibit representation to DOD and the USN, but not to the Air Force, Army, DISA, DIA, DLA, NIMA, DTRA, and NSA.

Example 1. A recently retired officer believes that the DOD general emphasis on manned aircraft is not in the national interest. After his departure, the officer may continue to argue the point to DOD.

Example 2. A former officer may make any statement of personal views to a former agency on any subject matter in which the officer has no substantial pecuniary interest when acting on the officer's own behalf.

### Foreign Government 1 Year Ban

[FLAG OFFICER ONLY]

Rule. For 1 year after leaving NAVAIR, you may not aid, advise, or represent a foreign government or political party with intent to influence the U.S Government.

### Procurement Integrity Act

Rule #1. For 1 year after a designated date, you may not accept compensation from a concerned contractor on a \$10 million or above DOD contract if you performed designated duties.

- "Designated duties" include procuring contracting officers, source selection authorities, members of selection evaluation boards, chiefs of financial or technical evaluation teams, program managers, deputy program managers, and administrative contracting officers. Also, officials who personally made any of the following decisions: award contracts, subcontracts, or modifications of contracts or subcontracts or task or delivery orders over \$10 million, establish overhead or other rates over \$10 million, approve issuance of a contract payment over \$10 million, or pay or settle a claim over \$10 million. ("Designated date" is the date of decision.)
- Compensation includes direct or indirect payment rendered as an employee, director, or consultant.
- For DOD purposes, "concerned contractors" are prime contractors.
- No "in-house" counseling exception.

Rule #2. You may accept compensation from a division or affiliate of the contractor that does not produce the "same or similar" products or services as the entity responsible for the contract.

Example #1. An officer recently served as a program manager for aircraft procurement involving Company X. Company Y is an automobile parts subsidiary of Company X. Since the subsidiary does not manufacture aviation parts, the officer may accept employment with Company Y.

Note. As of 8 April 1999, the DOD Standards of Conduct Office has determined that a division on the commercial, as opposed to government, side of a contractor's business produces the "same or similar products" as the parent company.

Example #2. A retired officer is interested in accepting compensation from a consulting firm. The consulting firm wants to hire the retired officer to provide in-house assistance to a contractor. The contractor was awarded a \$20 million contract that the retired officer took action on while on active duty six months ago. The retired officer should not accept compensation from the consulting firm since such compensation is an indirect payment from the contractor.

### Trade or Treaty 1 Year Ban

Rule. For 1 year after leaving NAVAIR you may not aid, advise, or represent someone else regarding trade or treaty negotiations that you worked on during your last year of government service.

- Trade negotiations are those undertaken pursuant to the Omnibus Trade and Competitiveness Act of 1988.

## **II. Searching for a Job**

[There are several sets of rules in this area. All three overlap considerably. However, each is reviewed below because all three have distinctive features.]

Rule #1. While negotiating employment, you can not take official action involving the entity you are negotiating employment with.

- Negotiation is defined as "a discussion or communication with another person, or such person's agent or intermediary, mutually conducted with a view toward reaching an agreement regarding possible employment with that person. The term is not limited to discussions of specific terms and conditions of employment in a specific position."

Rule #2. You must notify you superior of such negotiations, in writing, and disqualify yourself from performing duties affecting the entity. Unless the contact is initiated by another and you immediately reject it, you should submit a disqualification notice.

Rule #3. Before you begin "seeking employment," you must disqualify yourself from taking any action involving a prospective employer.

- Seeking employment includes the above defined negotiating and any unsolicited communication to you regarding employment.

Rule #4. You must promptly report, in writing, an employment contact with a bidder or offeror in a \$100,000 DOD procurement.

- This requirement applies even when you promptly reject the employment.

Example #1. An officer who evaluates new landing gear mails his resume to 50 defense contractors involved in manufacturing naval aviation equipment. He has begun seeking employment with contractors involved in the manufacture of landing gear; however, he has not begun seeking employment with any of the remaining contractors.

Example #2. If an officer performs quality assurance inspections of products produced by Company X while negotiating for prospective employment with Company X, the employee violates the law. This is true even if the employee recommended that the government not accept any products from Company X during the period the employee was engaged in employment negotiations.

Example #3. Submission of a resume or other proposal to an entity or person who is directly affected by the performance or nonperformance of your duties constitutes seeking employment. However,

seeking employment does not include requesting a job application or submitting resumes or other employment proposals to an entity or person that is not affected by the performance or nonperformance of your duties.

### **III. Miscellaneous Restrictions**

#### Compensation Ban on Representation by Others

Rule. After you leave government service, you may not accept compensation for representational services, which were provided by anyone while you were a government employee, before a federal agency or court regarding particular matters in which the government was a party or had a substantial interest. [This provision could apply if you were hired by a consulting or lobbying firm.]

#### Foreign Employment

Rule. Absent prior authorization from SECNAV, you may forfeit your military retired pay during the time you perform compensated services for a foreign government.

#### Employment by DOD

Rule. Absent waiver from SECNAV, there is a six-month waiting period for DOD jobs.

#### Employment During Terminal Leave

Rule. You can not work for a state or local government while on active duty, including terminal leave.

#### Use of Nonpublic Information

Rule. You may never use nonpublic information to further your own private interests, or those of another, including a subsequent employer.